

Before the
Federal Communications Commission
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of)

Reexamination of Comparative)
Standards for New Noncommercial)
Educational Stations)

MM Docket No. 95-31

**Further Comments of the Real Life
Educational Foundation of Baton Rouge, Inc.**

Real Life Educational Foundation of Baton Rouge, Inc. ("Real Life"), by its counsel, hereby submits its response to the Commission's *Further Notice of Proposed Rule Making*, 13 FCC Rcd 21167 (1998) [hereinafter cited as *Notice*]. Real Life filed an application for a new noncommercial station in Baton Rouge, Louisiana, on March 22, 1984. Nearly 10 years later, on April 16, 1993, the Commission released its *Memorandum Opinion and Order*, 8 FCC Rcd 2675 (1993) affirming the Review Board's decision denying Real Life's application and granting the competing application of Jimmy Swaggart Ministries, Inc. On May 14, 1993, Real Life filed a Notice of Appeal, pursuant to 47 U.S.C. §402(b). After Real Life submitted its brief to the court, the Commission successfully sought remand of the case, which remains undecided pending the outcome of this proceeding.

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Real Life filed comments herein on April 24, 1995.¹ Therein Real Life urged adoption of two legally essential modifications to the Commission's noncommercial comparative criteria. First, Real Life contended, the Commission hardly may justify a policy to exclude consideration of media diversification in light of (1) its consistent recognition that noncommercial stations are no less media voices than commercial stations; (2) the significance of media diversity as a goal of broadcast regulation, and (3) the Commission's modification of other related policies to reflect its recognition of that reality.²

Second, Real Life submitted that the Commission should consider commercial as well as noncommercial signals in assessing the level of existing reception service in noncommercial comparative coverage analyses or, at least, to discount the significance of any coverage preference bases solely on noncommercial services.³

Real Life also suggested consideration of several other modifications and clarifications of the Commission's policies, as follows: (1) consideration of minority involvement; (2) consideration of local residence of principals; (3)

¹Comments of Real Life Educational Foundation of Baton Rouge, Inc., MM Docket No. 95-31 (filed April 24, 1995) [hereinafter cited as "Real Life Comments"].

²Real Life Comments at 5-10.

³Real Life Comments at 11-13.

preference for applicants with “objectives that are directed outwardly to the community rather than inwardly to the licensee;” and (4) consideration of the breadth of community representation on governing boards. Each of these criteria evidenced a nexus between the station and the community, Real Life observed, and, thus, deserved full consideration by the Commission.⁴

Real Life, after nearly 15 years of litigation following submission of its application, concurs with the Commission that traditional hearings ought be rejected as a means of selecting among competing noncommercial applicants.⁵

Real Life, based on its previously-filed comments, now submits that in either a lottery or point system, media ownership should be given weight.⁶

Furthermore, in the event the Commission decides to employ a point system, Real Life submits that points should be awarded for applicants with objectives that are directed outwardly to the community rather than inwardly to the licensee and for broader community representation on governing

⁴Real Life Comments at 14.

⁵*Notice*, 13 FCC Rcd at 21171. The horror of the comparative hearing process is illustrated by Real Life’s saga. *See* the excerpt from the statement of the case in Real Life’s brief, attached hereto as Exhibit One.

⁶Real Life Comments at 5-10.

boards.⁷ The Commission's Review Board previously had defined the former as a critical factor under the noncommercial integration issue:

[I]t appears from all that has been written that the Commission's meaning, when discussing a noncommercial licensee's "educational and cultural objectives," is that such objectives are assumed to be directed outwardly to the station's listening community, and not directed exclusively to the licensee itself.

Seattle Public Schools, 4 FCC Rcd 625, 640 (Rev. Bd. 1989). Thus, for example, a station proposed as a training facility for broadcast students at an applicant's institution and/or focusing primarily on service to the students of the applicant's institution should be considered inferior to an applicant which proposes an educational program of use to and available to the entire listening public.⁸

Similarly, Real Life endorses a "representativeness credit" as proposed by the Commission.⁹ This, again, would tend to assure a more outward, community-directed focus, than an inward, applicant-directed focus.

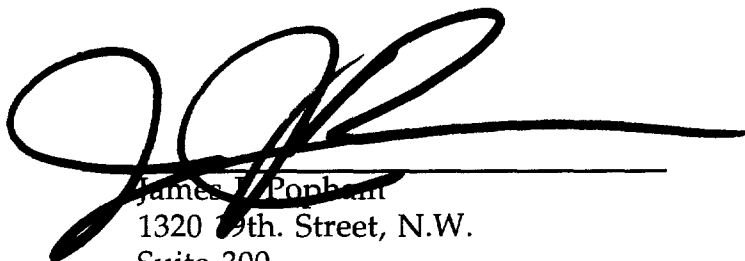
⁷See *Notice*, 13 FCC Rcd at 21178-21179. Real Life has taken no position on other lottery weighting criteria or point awards, which, as proposed by the Commission, appear to have no material bearing on Real Life's case.

⁸The Commission also suggests a "local educational presence credit." *Notice*, 13 FCC Rcd at 21179. Real Life warns that such a credit would embroil the Commission in disputes over which institutions deserve the credit. Again, Real Life's case serves as an illustration of this sort of difficulty. See Exhibit One.

⁹*Notice*, 13 FCC Rcd at 21179.

In conclusion, Real Life appreciates the difficulty the Commission faces and commends the Commission for proposing alternatives which will prevent another 15-year comparative debacle like that endured by Real Life. Needless to say, Real Life strongly urges a prompt resolution of this proceeding.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'J. Popham', is written over a horizontal line.

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January 28, 1999

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 93-1320

REAL LIFE EDUCATIONAL FOUNDATION OF BATON ROUGE, INC.,

Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,

Appellee.

Appeal from an Order of the Federal Communications Commission

BRIEF FOR APPELLANT

(EXCERPT)

STATEMENT OF THE CASE

This case is a comparative broadcast license proceeding for a new noncommercial FM station at Baton Rouge, Louisiana. In such cases, the Federal Communications Commission ("Commission") has refrained from applying the same comparative criteria as it applies in comparative cases

involving multiple applicants for new commercial stations.¹⁰ The Commission long ago found the commercial comparative criteria “virtually meaningless” in noncommercial comparative proceedings. *New York University*, 10 Rad. Reg.(P&F) 2d 215, 217 (1967) [hereinafter cited as *New York University*]. Therein, the Commission adopted a distinct set of criteria for comparative evaluation of applicants for noncommercial facilities. The *New York University* criteria were applied to the two applicants below.

The first applicant was Real Life Educational Broadcasting Foundation of Baton Rouge, Inc. (“Real Life”), which filed its application on March 22, 1984. Real Life was formed to provide an educational broadcast service and to encourage and promote educational opportunities in Baton Rouge. Real Life Ex. 2 at 1; transcript (“tr.”). 131 [Joint Appendix (“J.A.”) at].¹¹ Real Life proposed to broadcast educational programming, including instructional (*i.e.*, courses offered for college or high school credit or for use in classroom instruction) and general educational programs, interwoven with light

¹⁰The comparative criteria for commercial cases were set forth originally in the Commission’s *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393 (1965) [hereinafter cited as *1965 Policy Statement*].

¹¹Real Life is a non-profit corporation controlled by a Board of Directors of seven members, five of which are residents of Baton Rouge. Real Life Ex. 1 at 1 ... According to its Articles of Incorporation, Real Life was organized exclusively for charitable, religious, educational, and scientific purposes. Real Life Ex. 2 at 1 ... ***[N.B. No joint appendix was prepared or filed because the Commission sought remand of the case prior to filing its brief. All other references to the joint appendix have been deleted from this excerpt].***

entertainment designed to attract a large audience. Real Life Ex. 3 at 1-2; tr. 98, 135 ...¹² Real Life proposed to coordinate the selection of instructional programming with local educational institutions, including the Louisiana State University. Real Life Ex. 3 at 1-2; Real Life Ex. 19 at 1; tr. 98, 147, 153, 175 ... Real Life also proposed to broadcast news and public affairs programming. Real Life Ex. 3 at 3-6 ...

Real Life also proposed to make its studio facilities available to local colleges and high schools as a "hands on" training facility for students. Real Life Ex. 4 at 1 ... As a special service to the blind and print handicapped, Real Life proposed to make available one or both of its SCA subchannel frequencies to Radio for the Blind and Print Handicapped, which provides a "reading" service via noncommercial FM station WRBH, New Orleans, Louisiana, so as to extend their service to Baton Rouge. Real Life Ex. 11 at 1; tr. 104-5 ...¹³

Three of the seven members of Real Life's Board of Directors proposed to work at the new station, including its president and progenitor, Danny M.

¹²Real Life proposed to broadcast 25 hours of instructional programming per week. Real Life Ex. 3 at 1-2; tr. 175 ...

¹³Prior to the hearing in this case, the application of Radio for the Blind and Print Handicapped for the Baton Rouge FM station was dismissed voluntarily. *See Initial Decision of Administrative Law Judge Richard L. Sippel*, 4 FCC Rcd 8433, 8443, n.1 (ALJ 1989) [hereinafter cited as *ID*] ... A subchannel signal may be received only with special equipment.

Dean, who would serve as full-time general manager of Real Life's station. Real Life Ex. 5 at 1; tr. 110. ...¹⁴ Mr. Dean has extensive experience in educational and commercial radio broadcasting and is a life-long resident of Baton Rouge. He has worked at WBRH, Baton Rouge, since 1978, and has been general manager of WBRH since January, 1989. Real Life Ex. 7 at 1-2; tr. 94 ...¹⁵ Matthew Tullos, who also proposed to serve as part-time program director at the station has resided in Baton Rouge, has radio experience, has a masters degree in communications, is an ordained minister, and a published playwright. Real Life Ex. 7 at 1-2. ... Dorothy Garlow, who proposed to serve as Coordinator of Educational/Instructional Programming at the station, also is long-time resident of Baton Rouge, where she has been involved in youth activities. Real Life Ex. 8 at 1. ...

Real Life also proposed to install emergency power generating capability at its station. Real Life Ex. 10 at 1 ...

Real Life's proposed station would provide service to a population of 423,392 persons, including a second educational FM service to a population of

¹⁴Mr. Dean hoped to have some "positive impact on the community" and, through familiarity with the area, local broadcast service, and local educational opportunities, saw the need for instructional programming in Baton Rouge. Real Life Ex. 6 at 1-2, tr. 95-99, 109 ...

¹⁵WBRH should not be confused with the previously mentioned WRBH. WBRH, where Mr. Dean is employed, is licensed to the East Baton Rouge Parish School Board and is operated as an instructional facility for students at Baton Rouge High School. Tr. 175 ...

7,211; a third educational FM service to a population of 11,617; a fourth educational FM service to a population of 7,838; and a fifth educational FM service to a population of 2,888. Total service to undeserved areas, therefore, covered a population of 29, 554. Joint Engineering Exhibit, Table IV ...

Jimmy Swaggart Ministries ("JSM") filed a mutually exclusive application for the same frequency on August 22, 1984. JSM is a religious non-profit corporation, which according to its Constitution and Bylaws is "organized for the purpose of establishing an evangelical pentecostal outreach to people around the world." Real Life Ex. 19 at 2-3 ...¹⁶ The Reverend Jimmy Swaggart, who is designated in the Bylaws as President of JSM for an indefinite term, appoints all the directors of JSM, which serve at his discretion. Real Life Ex. 19 at 20, 26

JSM proposed to broadcast instructional and educational programming. JSM Ex.1 at 3 ...¹⁷ Instructional programming would be coordinated with and produced by the Jimmy Swaggart Bible College ("JSBC"). JSM Ex.1 at 3; Real

¹⁶They also provide that Jimmy Swaggart Ministries shall maintain its inherent right to sovereignty in the conduct of its own affairs." Real Life Ex. 19 at 2-3 ...

¹⁷JSM proposed to broadcast 16.25 hours of instructional programming per week. Real Life Ex. 20; tr. 263, 267 ...

Life Ex. 20 at Exhibit 8; tr. 263, 267 ...¹⁸ The college is an outgrowth of JSM and maintains a very distinctive doctrinal position. Tr. 323-324 ... The JSBC constitution includes rigid strictures on what may be taught in some academic areas, such as anthropology, psychology, and sociology, and all faculty members must subscribe annually to these limitations. Real Life Ex. 19A at 17-18, 25-26 ...¹⁹

JSM also proposed to use its station in concert with JSBC to provide a source of Christian education and instruction. JSM Ex.1 at 3 ... JSM proposed to broadcast numerous religious programs during which donations would be solicited to support JSM's religious and charitable activities. Real Life Ex. 20 at Exhibits 8 and 9 ...²⁰ JSM also proposed to broadcast news and public affairs programming. Real Life Ex. 20 at Exhibit 8; tr 263-265, 270-271 ...

¹⁸JSBC is accredited by the Association of Christian Schools, Inc., and had applied for accreditation with the Southern Association of Colleges and Universities, but JSM never reported that full accreditation had been attained. JSM Ex.2 at 1-2; tr.311 ...

¹⁹For example, the Distinctives set forth in Article IV of the JSBC Constitution provide, in part, that "Biblical principles will be taught as the answer to the questions raised by secular psychology and sociology. All psychology taught must have, as an exclusive text, the Bible. Any textbook used in this area must be exclusively based on the Bible. Real Life Ex. 19A at 17-18 ...

²⁰No programming from Catholic or Jewish sources was included on JSM's proposed program schedule. Tr. 238, 273 ...

JSM proposed to use its station as an instructional tool for students at JSBC, who would receive credit for work at the station. JSBC offered courses in the field of communications, but had dropped its major in media and communications due to financial constraints. JSM Ex.2 at 2; tr. 249 ...²¹ Class sizes in communications had decreased as a result. *Id.*

In 1987, the college had 1500 students and faculty of 85-90. Tr. 316-317 ... In January, 1989, the student body had declined to 418 students, including students enrolled in a one-year program leading to a certificate in biblical studies and two-year program leading to a Christian ministry diploma. JSM Ex.2 at 1; tr. 318 ... Two-thirds of the students resided on campus; they generally would not be permitted to take courses on JSM's FM station. Tr. 318, 338 ...²² The faculty had declined to 27 full-time and 15 or 16 adjunct professors plus two full-time professors at the affiliated seminary, only six of which held PhD.'s. JSM Ex.2 at 1; tr. 316-317, 319 ...²³

²¹JSBC planned to reinstitute the media communications major in fall, 1989, but the record fails to reflect whether it did. Tr. 304 ...

²²Resident students must attend Sunday worship services at JSM's Family Worship Center. Real Life Ex. 19A at 62; tr. 324 ...

²³This decline has continued. *See* Motion to Reopen the Record, Designate Issues, and Remand the Proceeding, filed July 13, 1992, at 7-9 [J.A. at] [[hereinafter cited as "Remand Motion"].

No members of the Board of directors of JSM proposed to work at JSM's FM station. JSM did not propose to install emergency power generating equipment at its FM station.

JSM owned and operated six commercial radio stations, including WLUX (AM), also located in Baton Rouge. Real Life Ex. 17 at 1 ... Some of the programming (including some public affairs programming) to be broadcast on JSM's FM station also would be broadcast on WLUX, which would share studio facilities with the FM station. Tr. 249, 272 ...²⁴ JSM also produced a half hour daily television program, broadcast on approximately 145 stations and a one-hour weekly program carried on 245 stations. JSM Ex.1 at 7 ...

JSM's proposed station would provide service to a population of 423,416 persons, including a second educational FM service to a population of 29,578. Joint Engineering Exhibit, Table IV ...

On July 20, 1988, the FCC released its order designating the Real Life and JSM applications for hearing. *Hearing Designation Order*, 3 FCC Rcd 4359 (1988) [hereinafter cited as *HDO*] ... The *HDO* delineated the following issues for hearing:

- (1) To determine (a) whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public

²⁴WLUX has not been used to offer instructional programming, but has been used for student on-air training and completion of radio class assignments. Tr. 278, 288, 295, 318, 326 ...

interest, and if so, the terms and conditions thereof; (b) the extent to which each of the proposed operations will be integrated into the overall cultural and educational objectives of the respective applicants; and (c) whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.

(2) To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.²⁵

HDO, 3 FCC Rcd at 4360. The *HDO* also specified that evidence on comparative coverage should be taken, but limited to the available noncommercial FM signals within the respective service areas. *Id.* ...²⁶ Both

²⁵The issues designated reflect the FCC's "standard noncommercial comparative criteria" as set forth in *New York University*. For ease of reference, the issues shall be referred to as follows:

Issue (1)(a) - The "share-time" issue.

Issue (1)(b) - The "noncommercial integration" issue.

Issue (1)(c) - The "other factors" issue.

Issue (2) - The "ultimate comparative" issue.

The so-called "noncommercial integration" issue is distinct from the "integration" factor which weighed so heavily in commercial comparative licensing proceedings until the court's decision in *Bechtel v. FCC*, 10 F. 3d 875 (D.C. Cir.1993) [hereinafter cited as *Bechtel II*]. For nearly 20 years, the Commission also had included in those criteria an issue to determine the manner in which each applicant would "meet the needs of the community to be served." The omission of that element of the criteria in the *HDO* in this case was considered "a purposeful policy change" by the Review Board. *Decision*, 6 FCC Rcd 2577, 2578 (Review Board 1991) ...

²⁶In its Application for Review of the Decision of the Review Board in this case, Real Life sought review of the *HDO* to the extent that it limited the comparative coverage analysis to noncommercial stations and accorded coverage advantages the same significance in noncommercial cases as it did in commercial cases. Real Life Application for Review at 2-4. ... Pursuant to §1.115(e)(3) of the FCC's rules, 47 CFR §1.115(e)(3), review of a hearing designation order is deferred until applications for review of a final decision of the Review Board are filed.

Real Life and Swaggart were considered fully qualified to be noncommercial licensees; no qualifying issues were specified.*Id.* ...

Pursuant to the *HDO*, a hearing was conducted before an Administrative Law Judge ("ALJ") on January 23-25, 1989. Real Life produced testimony from the three directors of Real Life who proposed to work at the station and Dr. Fritz McCameron, Dean of Continuing Education at Louisiana State University.²⁷

No officer or director of JSM testified at the hearing. The Reverend Teddy Carroll Sauceman, general manager of WLUX, JSM's AM station in Baton Rouge, and the proposed manager of the FM station testified. Tr. 245 ... Rev. Sauceman had prepared the application, but with no direct instruction or direction from JSM President Jimmy Swaggart, who had been authorized by the JSM Board of Directors to prepare the application. Real Life Ex. 20 at Exhibit 4; tr. 250 ...²⁸ Dr. Michael Haley, President of JSBC, also testified. Dr. Haley was not a member of the Board of Directors of JSM, Tr. 310 ... He was

²⁷The testimony of Real Life Director Sharon Weston, a black member of City Council of Baton Rouge, who holds a Masters in Communications, was rejected by the ALJ because Ms. Weston did not propose to work at the station. Tr. 35-36 ...

²⁸Rev. Sauceman had had no personal meeting with Rev. Swaggart concerning the application in the year preceding the hearing, but had spoken to his secretary about it. Tr. 244-246, 250 ... Industry directories indicate that Rev. Sauceman no longer is general manager of WLUX. *See 1994 Broadcasting and Cable Yearbook* at B-156.

not involved in JSM's program proposal, and the radio station application had not been discussed by the JSBC Board of Directors. Tr. 309-310, 319 ...²⁹

The *Initial Decision* concluded that JSM was the comparatively superior applicant and granted the application of JSM. Under the "noncommercial integration" issue, the ALJ awarded JSM a slight preference. This preference was based on the ALJ's conclusions that: (1) JSM's methodology for ascertainment of community needs was superior to Real Life's;³⁰ (2) Real Life had failed to "show a reasonable assurance by a preponderance of the evidence to effect educational programming;" (3) JSM had shown that its radio programming would be integrated into its educational objectives in light of its close relationship with JSBC.*ID* at ¶¶70-72, 4 FCC Rcd at 8441 ...

Under the "other factors" issue, the ALJ awarded JSM a moderate preference for its superior comparative coverage based strictly on its provision of a second educational service to a larger population. *ID* at ¶¶74, 4

²⁹Indeed, Dr. Haley was unaware of the radio station proposal until six weeks prior to his deposition. Tr. 311-312 ... Dr. Haley reportedly left JSBC in July, 1991. See Motion to Reopen the Record, Designate Issues, and Remand the Proceeding, filed July 13, 1992, at 8 [hereinafter cited as Remand Motion [J.A. at]].

³⁰In this respect the ALJ had determined that of each applicant's efforts to ascertain community needs remained a pertinent consideration and that JSM, which was closely affiliated with JSBC, was not required to make a showing of ascertainment to the same degree as a non-educational institution such as Real Life. *Initial Decision* at ¶¶69, 73, 4 FCC Rcd at 8441 ...

FCC Rcd at 8441-8442 ... The ALJ refused to award a preference to Real Life for its proposal to make SCA facilities available to radio reading services. *Initial Decision* at ¶75, 4 FCC Rcd at 8442 ... However, Real Life was awarded a very slight preference under the “other factors” issue for its proposed auxiliary power proposal. *Initial Decision* at ¶78, 4 FCC Rcd at 8442-8443 ...

Although the ALJ had received evidence concerning the planned participation of three of Real Life’s directors in the day-to-day management of the station and the other media interests of JSM, he made no conclusions and awarded no preference under any of the designated issues with respect to either. The ALJ similarly ignored evidence showing that JSBC was in a state of decline, evidence that JSM had failed to construct nighttime facilities for WLUX after being authorized by the Commission to do so.

Real Life filed timely exceptions to the *ID* with the Review Board. After oral argument in the case, the Review Board certified to the Commission the question of whether JSM should have been assessed a substantial comparative diversification demerit in light of its ownership of other stations and, in particular co-located WLUX. *Memorandum Opinion and Order*, 5 FCC Rcd 3420 (Rev. Bd. 1990)[hereinafter cited as *Certification Order*] ... In response, the Commission maintained the policy enunciated in *New York University*, and refused to consider media diversification in a noncommercial case. *Real Life Educational Foundation of Baton Rouge, Inc.*,

6 FCC Rcd 259 (1991) [hereinafter cited as *Diversification Order*] ... The Commission pointed out that:

Because a central purpose for setting aside the channels was to assist educational entities advance their educational work, the number of other stations owned by an applicant, commercial or noncommercial, is irrelevant to the determination of which applicant would best serve the public interest.

Id., 6 FCC Rcd at 260 ... Thus, relying on the “distinct and different purposes for the establishment of reserved channels for noncommercial educational stations,” the Commission found “no public interest reason to modify the criteria recognized as comparative factors in an individual contest for a noncommercial educational license.” *Id.* at ¶16-17, 6 FCC Rcd at 260 ...

Following the Commission’s response, the Board on May 14, 1991, released its *Decision* modifying the *ID*, but affirming the award of the station to JSM.. With respect to the “noncommercial integration” issue, the Board concluded that neither Real Life nor JSM was entitled to a meaningful preference. In so ruling, the Board honored Real Life’s exception that the Commission had eliminated consideration of the applicants’ efforts to ascertain community problems, needs, and interests. Thus, the Board did not compare the ascertainment efforts of Real Life and JSM. *Decision* at ¶¶4-7, 6 FCC Rcd at 2577-2578 ... The Board, unlike the ALJ, also credited the testimony of LSU’s Dr. McCameron and held that Real Life had “amply demonstrated the proposed integration of its cultural and educational objectives.” *Decision* at ¶10, 6 FCC Rcd at 2578-2579 ... The Board, however,

refused to award any credit to Real Life for its proposal to integrate three of its directors into the day-to-day operations of its station, citing *New York University*, 10 *Rad. Reg.(P&F)* 2d at 217. The Board also refused to award any credit on the basis of the “orientation” of either applicant:

Though Real Life’s aims seem more secular overall, while JSM’s are rooted in the propagation of a more sectarian ministry, we decline Real Life’s invitation to become enmeshed in a subjective choice as between its particular orientation and that of JSM.

Ultimately, the Board concluded that under the noncommercial integration issue, “no rational distinction between the applicants can be extracted from this record.” *Decision* at ¶10, 6 FCC Rcd at 2578 ...

Under the “other factors” issue, the Board affirmed the ALJ’s award of a moderate comparative coverage preference to JSM and though calling it “slight” as opposed to “very slight,” the preference awarded Real Life for its auxiliary power proposal. *Decision* at ¶¶11-12, 6 FCC Rcd at 2579 ... The Board noted Real Life’s exception concerning the strength of the preference awarded to JSM for its superior coverage, but considered itself constrained by the *HDO* to recognize the coverage analysis limited to noncommercial services. *Decision* at ¶11, n.12, 6 FCC Rcd at 2580 ... Numerous other exceptions relating to the “other factors” issue raised by Real Life were ignored. *See* Real Life’s Exceptions at 34-39 ... The Board ultimately upheld the *ID*, although strictly on the basis of JSM’s coverage preference under the “other factors” issue. *Decision* at ¶14, 6 FCC Rcd at 2579 ...

On June 14, 1991, Real Life filed a timely application for review of the Review Board's *Decision*. ... Real Life urged the Commission to "add a gloss of clarity to its noncommercial comparative criteria and otherwise conform them to the reality of noncommercial broadcasting *post-1967*." Application for Review at 2 ...³¹ Real Life also argued that "even under the noncommercial criteria as presently applied, the Board's decision in significant respects ignores and/or conflicts with Commission policy and is arbitrary and capricious." *Id.* ... In particular, Real Life urged that: (1) the evaluation of comparative coverage should include consideration of already available commercial as well as noncommercial stations; (2) comparative coverage advantages should be accorded less significance in noncommercial comparative cases than in commercial cases; (3) that the Board had ignored evidence showing that JSM's coverage advantage stemmed from a technical facilities proposal which likely never would be constructed; (4) participation of Real Life's directors in the day-to-day operations of the station should have been considered; (5) the Board had misapplied the "noncommercial integration" issue by failing to consider the superior community orientation of Real Life's objectives and the closer involvement of Real Life's directors with station operations; and (6) the Board ignored several "other factors" which demonstrated that Real Life would provide a superior FM educational

³¹The Review Board shared similar hopes. *Texas Educational Broadcasting Cooperative, Inc.*, 7 FCC Rcd 7525 (Rev.Bd. 1992).

broadcast service, to wit., the decline of JSBC and Real Life's proposal to make its SCA facilities available to a radio reading service. Application for Review

...

On July 13, 1992, Real Life also filed a Motion to Reopen the Record, Designate Issues, and Remand the Proceeding. Remand Motion ... Real Life sought addition of issues (1) to determine whether JSM was financially qualified to be a licensee in light of pending liens and judgments against JSM; (2) to determine whether JSM had failed to report significant changes in the information provided in its application and other matters of possible decisional significance including facts evidencing the further decline of JSBC, which is an integral part of JSM's proposal for its FM station. Remand Motion

...

On April 16, 1993, the Commission released its *Memorandum Opinion and Order*, 8 FCC Rcd 2675 (1993) [hereinafter cited as *Commission Decision*] [J.A. at], affirming the Review Board's decision and denying Real Life's Remand Motion. With respect to the Remand Motion, the Commission held that it was not timely and, in any event, that Real Life's allegations were "not sufficient to affect the outcome of the proceeding." *Id.* However, Commission made no mention of the other element of Real Life's Remand Motion, *i.e.*, JSM's failure to report changes in circumstances at JSBC which revealed the further decline of the college.

The Commission also adopted the Board's decision, although with "some discussion" of two of Real Life's arguments relating to JSM's coverage preference which were not specifically addressed by the Board. *Id.* at ¶2, 8 FCC Rcd at 2675 ... First, the Commission rejected as "speculative" Real Life's argument that JSM's past conduct with respect WLUX's nighttime facilities supports the conclusion that JSM is unlikely to construct its proposed facilities.*Id.* at ¶12-13, 8 FCC Rcd at 2676 ... The Commission also ruled that Real Life had failed to demonstrate that JSM proposes any significant program duplication, such that JSM's coverage proposal should be discounted. *Id.* at ¶14, 8 FCC Rcd at 2676 ... Otherwise, the Commission did not address the issues raised in Real Life's Application for Review.

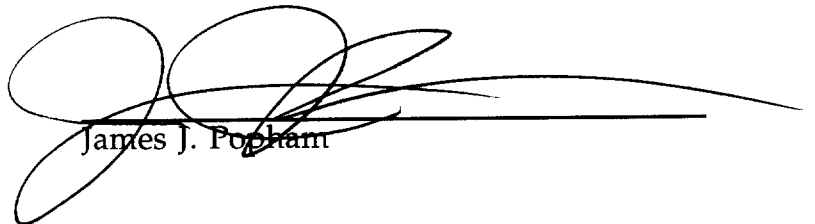
On May 14, 1993, Real Life filed its Notice of Appeal with this court pursuant to 47U.S.C. §402(b).

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing Further Comments were served on this 28th day of January 1999, via first class mail, postage prepaid, upon the following:

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